

ASSEMBLY BILL

No. 808

Introduced by Assembly Member Fuentes

February 26, 2009

An act to amend Section 13558 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 808, as introduced, Fuentes. Driving under the influence: administrative hearing.

Under existing law and subject to an administrative hearing, the Department of Motor Vehicles (DMV) is required to immediately suspend the privilege of a person to operate a motor vehicle if the person was driving a motor vehicle when the person had 0.08% or more, by weight, of alcohol in his or her blood, the person was under 21 years of age and had a blood-alcohol concentration of 0.01% or greater, as measured by a preliminary alcohol screening test, or other chemical test, or the person refused to submit to or failed to complete specified chemical or alcohol screening tests under specific circumstances.

Existing law also requires the DMV to notify the person that he or she has within 10 days of the receipt of the notice of the order of suspension or revocation to request a hearing to contest the order of suspension or revocation.

This bill would extend this period to 90 days.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 13558 of the Vehicle Code is amended to read:

13558. (a) ~~Any~~ A person, who has received a notice of an order of suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13353, 13353.1, 13353.2, 13388, ~~or 23612, or 13382~~ or a notice pursuant to Section 13557; may request a hearing on the matter pursuant to Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section.

(b) If the person wishes to have a hearing before the effective date of the order of suspension or revocation, the request for a hearing shall be made within ~~40~~ 90 days of the receipt of the notice of the order of suspension or revocation. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. ~~Any evidence~~ Evidence at the hearing shall not be limited to the evidence presented at an administrative review pursuant to Section 13557.

(c) (1) The only issues at the hearing on an order of suspension or revocation pursuant to Section 13353 or 13353.1 shall be those facts listed in paragraph (1) of subdivision (b) of Section 13557. Notwithstanding Section 14106, the period of suspension or revocation specified in Section 13353 or 13353.1 shall not be reduced and, notwithstanding Section 14105.5, the effective date of the order of suspension or revocation shall not be stayed pending review at a hearing pursuant to this section.

(2) The only issues at the hearing on an order of suspension pursuant to Section 13353.2 shall be those facts listed in paragraph (2) of subdivision (b) of Section 13557. Notwithstanding Section 14106, the period of suspension specified in Section 13353.3 shall not be reduced.

(d) The department shall hold the administrative hearing before the effective date of the order of suspension or revocation if the request for the hearing is postmarked or received by the department on or before ~~40~~ 90 days after the person's receipt of the service of the notice of the order of suspension or revocation pursuant to Section 13353.2, 13388, 23612, or 13382.

1 (e) A request for an administrative hearing does not stay the
2 suspension or revocation of a person's privilege to operate a motor
3 vehicle. If the department does not conduct an administrative
4 hearing and make a determination after an administrative hearing
5 within the time limit in subdivision (d), the department shall stay
6 the effective date of the order of suspension or revocation pending
7 the determination and, if the person's driver's license has been
8 taken by the peace officer pursuant to Section 13388, 23612, ~~or~~
9 ~~13382~~, the department shall notify the person before the expiration
10 date of the temporary permit issued pursuant to Section 13388, *or*
11 23612, ~~or 13382~~, or the expiration date of any previous extension
12 issued pursuant to this subdivision, ~~provided if~~ the person is
13 otherwise eligible, in a form that permits the person to establish
14 to any peace officer that his or her privilege to operate a motor
15 vehicle is not suspended or revoked.

16 (f) The department shall give written notice of its determination
17 pursuant to Section 14105. If the department determines, upon a
18 hearing of the matter, to suspend or revoke the person's privilege
19 to operate a motor vehicle, notwithstanding the term of ~~any a~~
20 temporary permit issued pursuant to Section ~~13382~~, 13388, *or*
21 23612, ~~or 13382~~, the temporary permit shall be revoked and the
22 suspension or revocation of the person's privilege to operate a
23 motor vehicle shall become effective five days after notice is given.
24 If the department sustains the order of suspension or revocation,
25 the department shall include notice that the person has a right to
26 review by the court pursuant to Section 13559.

27 (g) A determination of facts by the department upon a hearing
28 pursuant to this section has no collateral estoppel effect on a
29 subsequent criminal prosecution and does not preclude litigation
30 of those same facts in the criminal proceeding.